

Maritime Administration, DOT

Sec. 1

promotion, layoff or termination, direct or indirect compensation and selection for training, except where such provisions are governed by State civil service commissions or comparable government agencies. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the NSA setting forth the provisions of this nondiscrimination clause.

Art. 10. *Officials not to benefit.* No persons elected or appointed as members of or delegates to Congress, themselves or by any other persons in trust for them, or for their use or account shall hold or enjoy this agreement in whole or in part, except as provided in Section 433, Title 18, United States Code. The operator shall not employ any member of Congress, either with or without compensation as an attorney, agent, officer, or director.

Art. 11. *Right of Comptroller General to Examine Books and Records.* The Comptroller General of the United States or any of his duly authorized representatives shall have access to and the right to examine any pertinent books, documents, papers, and records of the contractor related to this agreement.

Art. 12. *Effective Date, Implementation, Duration and Termination.* (a) This agreement is effective as of the day and year set forth above.

(b)(1) if entered into on a standby basis, this agreement shall be operational as of the day and year when the United States notifies the contractor that the services specified in this agreement are required during a deployment of the Armed Forces of the United States, or other requirements of the nation's defense, *Provided* that during the standby period, the contractor will carry out the obligation specified in paragraph (a) of Article 2. No compensation will accrue to the contractor during the standby period.

(2) if entered into during a deployment of the Armed Forces of the United States, or other requirements of the nation's defense, this agreement shall be operational when executed.

(c) Unless sooner terminated, the agreement shall extend until 6 months after termination of the emergency.

(d) This agreement may be terminated upon thirty (30) days' written notice by either party to the other party hereto: *Provided, however,* That, notwithstanding any such termination, the contractor shall, at the option of the United States, continue to be responsible for the completion of any work which the contractor is performing on the effective date of termination. Termination or expiration of this agreement shall neither affect nor relieve any liability or obligation that may have accrued prior thereto.

(e) This agreement may be amended, modified or supplemented in writing at any time

by mutual consent of the parties hereto. This agreement may not be amended, modified or supplemented otherwise than in writing.

Art. 13. *Renegotiation.* This contract shall be deemed to contain all the provisions required by section 104 of the Renegotiation Act of 1951.

Art. 14. *Headnotes.* The use of headnotes at the beginning of the articles of this agreement is for the purpose of description only and shall not be construed as limiting or in any other manner affecting the substance of the articles themselves.

In witness whereof, the parties hereto have executed this agreement in triplicate as of this ____ day of __, 19 ____.

UNITED STATES OF AMERICA, DEPARTMENT OF
COMMERCE, MARITIME ADMINISTRATION

(Seal)

Attest:

Secretary _____

Director, National Shipping Authority _____
(Corporate Seal)

Attest:

Secretary _____

By: _____

Approved as to Form:

General Counsel _____, Maritime Administration.

PART 1902. FEDERAL PORT CONTROLLER

Schedule A

Agreed positions.

Schedule B

Agreed office facilities, furniture and support resources.

[44 FR 9382, Feb. 13, 1979. Redesignated at 45 FR 44587, July 1, 1980, and amended at 46 FR 36710, July 15, 1981; 60 FR 38737, July 28, 1995]

PART 347—OPERATING CONTRACT

Sec.

1. Purpose.
2. Stand-by agreements.
3. Terminal operating contract.

AUTHORITY: The Defense Production Act of 1950, as amended (50 App. U.S.C. 2061, *et seq.*); E.O. 12656, sec. 1401(7) (53 FR 47491, 3 CFR 1988 Comp.); E.O. 12919, section 201(a), June 3, 1994, 59 FR 29525; 49 CFR 1.45(5).

SOURCE: 44 FR 9384, Feb. 13, 1979. Redesignated at 45 FR 44587, July 1, 1980, unless otherwise noted.

Sec. 1 Purpose.

This part prescribes the standard form of marine terminal contract to be entered into by the United States of

Sec. 2

America, acting by and through the Director, National Shipping Authority (NSA) of the Maritime Administration, U.S. Department of Transportation, with State or municipal authorities or private terminal operators for the provision of terminal operating services during civil defense emergencies or national emergencies declared by the President of the United States in accordance with existing statutory authority or by concurrent resolution of the Congress.

Sec. 2 Stand-by agreements.

The Director NSA, Maritime Administration, in advance of an emergency, may negotiate the standard form of terminal operating contract specified in Section 3, with terminal operators on a stand-by basis. Stand-by arrangements establish the framework of rapid initiation of government shipping operations at the outset of an emergency.

At port facilities, (as defined in section 1(e) of 32A CFR part 1901) under the control of the Maritime Administration and allocated for long term exclusive use by the Department of Defense (DOD), provisions will ordinarily be made for the use of contractors under DOD contracts to move DOD cargo through selected ports, to perform such services as pre-stowing, receipt, intransit storage and loading of cargo under DOD procedures for the Defense Transportation System. When it becomes necessary to move DOD cargo through marine terminals under the control of the Maritime Administration, but not allocated for long term exclusive use by DOD, contractors will be required to perform such services as DOD requires for handling cargo and documenting shipments under the Defense Transportation System, with corresponding contractual obligations.

Sec. 3 Terminal operating contract.

Contract MA _____

TERMINAL OPERATING CONTRACT

This agreement, made as of _____, 19____, between the United States of America (herein called the "United States"), acting by and through the Director, National Shipping Authority (NSA) of the Maritime Administration, Department of Transportation, and _____, a _____ organized and existing

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under the laws of _____ (herein called the "operator").

WITNESSETH

That in consideration of the covenants and agreements of the parties hereinafter contained and set forth, the parties here to do mutually covenant and agree as follows: Part. 1.

Article 1. *Relationship of parties.* (a) The United States engages the operator as an independent contractor to do and perform or arrange for the performance of all the customary duties and functions of a terminal operator, subject to the terms, covenants and conditions of this agreement and to such rules, regulations and orders as may be issued by the United States from time to time, with respect to such cargo and vessels as the United States may from time to time direct or designate, and at the following terminals: _____, more specifically described in Schedule A hereto attached and made a part hereof by reference, and at such other terminals as the United States may from time to time designate, which the operator may use under temporary assignment in order to expedite the loading and discharging of vessels under jurisdiction of the NSA.

(b) The operator hereby accepts such engagement and agrees to do and perform all the work required by it to be performed under this agreement in an economical and efficient manner and in accordance with the best operating practices, to exercise due diligence to protect and safeguard the interests of the United States in all respects and seek to avoid any delay, loss or damage whatsoever to United States shipping. The operator represents and warrants that it is the _____ of the herein before specified terminals.

Art. 2. *Compensation.* (a) As full and complete compensation for the work done and performed by the operator, the United States agrees to pay to the operator, as soon as practicable after the completion of each calendar month's work under the provisions of this agreement the following:

(1) For terminal services, an amount calculated on the basis of rates and charges contained in tariffs on file with the Federal Maritime Commission during the time this agreement is in effect: *Provided, however,* That the operator will be compensated, as a minimum, the amount per month set forth for each terminal in schedule A attached: *And provided further,* That, when the operator, with the approval of the Director, NSA, utilizes the terminal for cargo not controlled by the Director, NSA (that is, for commercial cargo), the compensation received by the operator for handling such cargo shall apply against the minimum compensation; and

(2) For stevedoring services provided or arranged for by the operator and any related